

HOUSE BILL REPORT

HB 1349

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to collective bargaining regarding hours of work for individual providers.

Brief Description: Requiring collective bargaining regarding hours of work for individual providers.

Sponsors: Representatives Conway, DeBolt, Morrell, Roach, Wood, Campbell, Green, Appleton, McCoy, Springer, Sells, Hunt, B. Sullivan, Simpson, P. Sullivan, Williams, Chase, Hankins and Ormsby.

Brief History:

Committee Activity:

Commerce & Labor: 1/31/05, 2/28/05 [DPS].

Brief Summary of Substitute Bill

- Requires, as a mandatory subject of bargaining, negotiations over any Department of Social and Health Services rule or policy that applies generally to a significant group of individual providers or consumers and, by its application, may result in a significant change in the number of hours worked by a significant number of individual providers.
- Excludes any requirement to bargain over an individual consumer's plan of care.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Hudgins and McCoy.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; and Sump, Assistant Ranking Minority Member.

Staff: Chris Cordes (786-7103).

Background:

Long-term Care Services

The Department of Social and Health Services' (DSHS) contracts with agency and individual home care workers (individual providers) to provide long-term care services for elderly and

disabled clients who are eligible for publicly funded services through the DSHS Aging and Adult Services and Developmental Disabilities programs. These services are provided through the Medicaid Personal Care program, state-funded programs such as Chore, or under a home and community-based waiver granted by the federal Department of Health and Human Services, which allows the program to continue receiving federal Medicaid funds. Home care workers provide DSHS clients with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. The individual providers are hired and fired by the client, but are paid by the DSHS.

The Home Care Quality Authority (HCQA) has responsibility for establishing qualifications for individual providers, recruiting and training individual providers, and assisting clients to find care by establishing a referral registry.

"Shared Living" Rule

In implementing the long-term care services program, the DSHS adopted a rule, generally known as the "shared living" rule, under which the DSHS will not pay for services such as shopping, housework, laundry, or meal preparation if the individual provider lives in the same household with the client. According to hearing examiner findings made in an unfair labor practice case filed with the Public Employment Relations Commission (PERC), this rule has resulted in a 15 percent deduction from the hours allotted to individual providers as compensation for their services in homes where they also reside.

Collective Bargaining for Individual Providers

Individual providers have collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA) administered by the PERC. Individual providers do not have the right to strike and are covered by the binding interest arbitration provisions of the PECBA. For purposes of bargaining, the Governor is the "public employer."

This law was revised in 2004 to explicitly state that wages, hours, and working conditions are determined solely through collective bargaining and, except for the HCQA, no state agency may establish policies or rules governing wages or hours of individual providers. However, this new provision also states that it does not modify various responsibilities of the DSHS, including the authority to establish a consumer's plan of care and determine the hours of care for which a consumer is eligible. In addition, it does not modify the Legislature's right to make programmatic modifications to the state's long-term care services program.

Negotiations in 2004

The first contract to be implemented under the individual provider collective bargaining law is effective until June 30, 2005. By law, negotiations for a new agreement must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires. In April 2004, the union representing the individual providers and the Governor's Labor Relations Office began negotiating for a successor contract. By August, a PERC mediator determined that the parties were at impasse on several issues. One of these issues involved the

"shared living" rule. The parties entered arbitration, and an arbitrated contract was awarded on October 6, 2004.

On August 31, 2004, the Office of Financial Management filed an unfair labor practice with the PERC, alleging that the union failed to bargain in good faith by insisting on submitting some issues, including the "shared living" rule issue, to arbitration. The PERC hearing examiner agreed that the union had committed an unfair labor practice, finding that the Legislature intended the DSHS to retain its core responsibility to administer the home care program and to set the hours of care and the plan of care for clients receiving services. The union has appealed the hearing examiner's decision to the PERC.

Summary of Substitute Bill:

A Department of Social and Health Services rule or policy is a mandatory subject of bargaining if the policy or rule, or proposed rule or policy, applies generally to a significant group of individual providers or consumers and, by its general application, may result in a significant change in the number of hours worked by a significant number of individual providers. However, this bargaining requirement (1) does not apply to rules or policies that are implementing legislative programmatic modifications to the long-term care services program; and (2) is not to be interpreted as requiring bargaining over any individual consumer's plan of care.

Substitute Bill Compared to Original Bill:

The substitute bill (1) applies to a rule or policy, as well as a proposed rule or policy; (2) adds that, to be subject to mandatory bargaining, the rule or policy must be one that applies generally to a significant group of individual providers or consumers and, by its application, may significantly change the hours worked by a significant number of individual providers; and (3) adds that these provisions do not require bargaining over any individual consumer's plan of care.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Several policies of the Department of Social and Health Services have had a huge impact on the working conditions of home care workers. In one case, the "184/96" rule was repealed after the collective bargaining agreement was approved last year. Now, the "shared living" rule has resulted in large deductions from home care worker's pay because of the impact on the hours of work that they may be compensated for. The Legislature last year attempted to address the "hours" issues with a compromise that required bargaining over hours

while preserving to the agency its authority over the program. This bill will not change the basic policy, but it will require bargaining over hours so that issues that impact workers can be addressed at the bargaining table. The bill does not presume any particular outcome; it simply requires the parties to bargain. Many home care workers now provide uncompensated care. If they care for several clients, some of whom live in the home, they are paid differently for providing the same care to these clients. In one client's case, the hours that could be compensated were cut in half, but the client's needs did not change. These workers may not qualify for health care coverage because the hours of work are so low. Many workers are being forced to leave these jobs because they can no longer make a living on the reduced hours of work. The "shared living" rule is now in litigation. The rationale behind the rule does not hold up when the client is one with special needs that require extra laundry, extra housekeeping, a special diet, etc. The assessment should be case-by-case, not across the board. If home care workers quit providing in-home services, the cost to place these clients in adult family homes is far more than what would have been paid to the home care worker. The bill only requires bargaining when the rule has a significant impact on worker hours.

(Neutral) While the parties were in bargaining, they agreed on many issues. But the PERC examiner agreed with the agency that some policy issues that the union tried to bring to the table were not mandatory subjects of bargaining. There are other policies that might be impacted in addition to the "shared living" rule. If the parties are required to bargain over too many agency rules, it will create significant delays in program changes and likely result in constant negotiations over hours of work. The "shared living" rule has been in place in some form for over 20 years. There are more than 9,000 workers in shared living arrangements with their clients. Some of the reduction in hours has resulted from a new tool that the Legislature mandated. It is an automated assessment that is intended to provide greater consistency between the services authorized for similarly situated clients. All clients were assessed and most got increases or decreases in hours of authorized care whether or not in shared living arrangements. Workers could take on additional clients to increase their total hours of work. If the "shared living" rule is repealed, the estimated cost to the program is \$26 million.

Testimony Against: None.

Persons Testifying: (In support) David Rolf, Service Employees International Union; Kathryn Bird; Amy Crewdson; and Robby Stern, Washington State Labor Council.

(Neutral) Steve McLain, Office of Financial Management, Labor Relations Office; and Penny Black, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.